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Docket No.: FE-13

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kurt Sager-Hintermann et al.  
Serial No: 09/775,310  
Filed: February 1, 2001  
For: DEVICE FOR SURFACE TREATMENT AND/OR COATING AND/OR PRODUCING CONSTRUCTION ELEMENTS, IN PARTICULAR, FLAT CONSTRUCTION ELEMENTS OF GLASS, GLASS ALLOYS OR METAL, BY A CONTINUOUS PROCESS  
Examiner: Steve M Varner  
Art Unit: 3635

Mail Stop: Appeal Brief  
Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

SUBMISSION OF BRIEF ON APPEAL

S I R:

Submitted herewith is a Brief on Appeal in triplicate in support of the appeal filed January 30, 2004.

A check in the amount of \$160.00 to cover the fee pursuant to 37 CFR § 1.17(c) is enclosed.

Any additional fees or charges required at this time in connection with the application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,  
FRIEDRICH KUEFFNER

Dated: June 29, 2004

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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 29, 2004.

By: *F. Kueffner*  
Friedrich Kueffner

Date: June 29, 2004



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Patent

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BRIEF ON APPEAL

S I R:

This appeal is taken from the Final Action mailed August 1, 2003.

07/07/2004 TBESHAW1 00000012 111835 09775310  
02 FC:2402 5.00 DA 160.00 OP

Real Party in Interest

The real party in interest in the above-identified application is:

Emil Bächli  
Marktgasse 7  
CH-5304 Endingen  
Switzerland

Related Appeals and Interferences

There are no related appeals or interferences of which Applicants are aware regarding the above-identified application.

Status of Claims

Claims 12-14 are canceled. Claims 1-11 are pending and subject to the present appeal. Claims 1-11 stand rejected by the Examiner under 35 U.S.C. 103(a) over U.S. Patent No. 4,136,492 to Willingham in view of U.S. Patent No. 5,263,297 to Kim.

Status of Amendments After Final Rejection

An amendment after final rejection was filed and entered upon the filing of the present appeal.

Summary of the Invention

The claimed invention recites a device for surface-treating, coating or producing construction elements in a continuous process. The device comprises production chambers 2 arranged successively closely adjacent to one another in a direction of transport of the construction elements through the device (See page 12, lines 5-7). Each one of the production chambers 2 has opposed ends with through openings 10 (See page 13, line 15). Each one of the production chambers 2 is configured to be connected to a vacuum source. Each one of the production chambers 2 is comprised of a stationary chamber part 3 of reinforced concrete 31 and a detachable chamber part 4 of reinforced concrete 31 connected to the stationary chamber part 3 (See page 12, lines 7-13). The stationary chamber part 3 has first edge areas and the detachable chamber part 4 has second edge areas. The first and second edge areas have sealing surfaces 13 configured to seal the stationary and detachable chamber parts

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relative to one another (See page 14, lines 7-16). Each one of the production chambers has walls defining a hollow interior 30. The walls consist of a metallic skin 6 anchored in the stationary and detachable chamber parts 3, 4, respectively (See page 12, line 19-page 13, line 3). The foregoing is covered in independent claim 1.

Claim 2 depends from claim 1, and further limits the same by defining the stationary and detachable chamber parts to comprise anchoring elements 7 embedded by the reinforced concrete 31. The metallic skin 6 is fastened to the anchoring elements 7. (See Fig. 2 and page 13, lines 1-3).

Claim 3 depends from claim 1, and further limits the same by defining that at least one of the stationary chamber part 3 and the detachable chamber part 4 of each one of the production chambers 2 is tub-shaped or hood-shaped so as to form the hollow interior 30 of the production chamber. (See page 7, lines 4-5).

Claim 4 depends from claim 1, and further limits the same by defining that the stationary chamber part 3 is provided with the hollow interior 30. (See page 12, lines 21-22).

Claim 5 depends from claim 1, and further limits the same by defining that the first and second edge areas are flanges having sides facing one another and wherein the sealing surfaces 13, 14 are located on the sides facing one another. (See Fig. 2 and page 14, lines 7-16).

Claim 6 depends from claim 1, and further limits the same by defining the sealing surfaces 13, 14 to be formed by the metallic skin 6. (See Fig. 2, and page 14, lines 12-14).

Claim 7 depends from claim 1, and further limits the same by defining each one of the production chambers 2 to further comprise a seal 15 arranged between the sealing surfaces 13, 14. (See page 14, line 16).

Claim 8 depends from claim 1, and further limits the same by defining that each one of the production chambers comprises a closeable line in communication with ambient air. (See page 7, lines 19-21).

Claim 9 depends from claim 1, and further limits the same by

defining that the metallic skin 6 consists of stainless steel.  
(See page 12, line 23).

Claim 10 depends from claim 1, and further limits the same by defining that the through openings 7 have closure flaps 15 configured to separate the hollow interiors 30 of the production chambers 2 from one another. (See page 14, lines 17-22).

Claim 11 is an independent claim drawn to An apparatus for manufacturing a device according to claim 1. The apparatus is comprised of a flat straightening plate 29 configured to receive the metallic skin 6 of one of the chamber parts 3, 4 during pouring of the concrete 31 to form the chamber part and to anchor the metallic skin 6 in the concrete. A frame 20, configured to be tightly placed onto a flat surface 19, is provided to receive a curable epoxide resin for forming a planar plate surface of the flat straightening plate 29. (See page 15, line 13- page 16, line 17).

Issues

The following issue is presented for review:

Whether claims 1-11 are unpatentable under 35 U.S.C. 103(a) over U.S. Patent No. 4,136,492 to Willingham in view of U.S. Patent No. 5,263,297 to Kim.

Grouping of Claims

Claims 1-11 stand or fall together.

Argument

The Rejection of Claims 1-11:

In rejecting claims 1-11, the Examiner stated the following when rejecting the independent claims as being unpatentable over Willingham in view of Kim:

"Regarding claim 1, Willingham shows production chambers (C) arranged successively closely adjacent to one another in a direction of transport of the construction elements through the

device. Willingham shows each one of the production chambers having opposed ends with through openings configured to be connected to a vacuum source. Willingham shows stationary (C) and detachable (2) chamber parts of concrete (Col. 47, Line 5-10). He does not show reinforced concrete. Reinforced concrete is well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use reinforced concrete in the structure of Willingham since this is the usual way of building concrete structures. The first and second edges may be sealing surfaces configured to seal the stationary and detachable chamber parts relative to one another. (Fig. 1)

Willingham does not show metallic skin anchored in the stationary and detachable chamber parts. Kim shows metallic skin (Abstract). It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use metal skin as in Kim in the structure of Willingham to protect the concrete from environmental damage."

Turning now to the references and particularly to the patent to Willingham, it can be seen that this reference discloses an industrialized building construction. Willingham does not teach a production chamber which is configured for use for surface treating, coating or finishing construction elements. Furthermore, there is no teaching by Willingham of production chambers that are arranged successively closely adjacent one another or that are configured to be connectable to a vacuum source, as in the presently claimed invention. The Examiner cites column 47, lines 5-10 of Willingham as teaching stationary and detachable chamber parts. Applicant has read this passage and only finds a discussion concerning the installation of electrical conduits. There is

absolutely no discussion of stationary or detachable chamber parts. Furthermore, the configuration of the production chambers to be connectable or connected to a vacuum source is a structural limitation. The limitation requires that the production chambers be constructed in a specific way, which is not taught or discussed by Willingham. The act of connecting the chamber to a vacuum source would be a functional limitation. Such an act is not being claimed. Still furthermore, Willingham makes no mention of a metallic skin for any purpose.

The patent to Kim discloses a structural member with a metal shell. The Examiner combined this reference with Willingham in determining that claims 1-11 would be unpatentable over such a combination. Applicant respectfully submits that there is no motivation to combine the references to arrive at the presently claimed invention. There is nothing in the teachings of either of these references that suggests production chambers as constructed in the claims presently on file. The Examiner's position that the references teach such a construction is merely conjecture and is not based on any actual teaching in the references. The only way the references can in any way be considered to have any teaching relevant to the present invention would be based upon impermissible hindsight. Without the use of hindsight no one

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skilled in the art would take anything away from the teachings of either Willingham or Kim that would suggest the present invention. The Examiner bases his rejection on generalizations rather than on what the references actually teach.

**Conclusion**

Accordingly, in view of the above considerations, it is Applicant's position that the Examiner's rejection of claims 1-11 under 35 U.S.C. 103(a) over Willingham in view of Kim is in error and should be reversed.

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A check in the amount of \$330.00 to cover the fee for filing an appeal brief is enclosed. Any additional fees or charges required at this time in connection with this application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

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Dated: June 29, 2004

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Appendix

1. A device for surface-treating, coating or producing construction elements in a continuous process, the device comprising:

production chambers arranged successively closely adjacent to one another in a direction of transport of the construction elements through the device;

each one of the production chambers having opposed ends with through openings;

each one of the production chambers configured to be connected to a vacuum source;

each one of the production chambers comprised of a stationary chamber part of reinforced concrete and a detachable chamber part of reinforced concrete connected to the stationary chamber part, wherein the stationary chamber part has first edge areas and the detachable chamber part has second edge areas, wherein the first and second edge areas have sealing surfaces configured to seal the stationary and detachable chamber parts relative to one another;

each one of the production chambers having walls defining a hollow interior, wherein the walls consist of a metallic skin anchored in the stationary and detachable chamber parts, respectively.

2. The device according to claim 1, wherein the stationary and detachable chamber parts comprise anchoring elements embedded by the reinforced concrete and wherein the metallic skin is fastened to the anchoring elements.
3. The device according to claim 1, wherein at least one of the stationary chamber part and the detachable chamber part of each one of the production chambers is tub-shaped or hood-shaped so as to form the hollow interior of the production chamber.
4. The device according to claim 1, wherein at least the stationary chamber part is provided with the hollow interior.
5. The device according to claim 1, wherein the first and second edge areas are flanges having sides facing one another and wherein the sealing surfaces are located on the sides facing one another.
6. The device according to claim 5, wherein the sealing surfaces are formed by the metallic skin.
7. The device according to claim 1, wherein each one of

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the production chambers further comprises a seal arranged between the sealing surfaces.

8. The device according to claim 1, wherein each one of the production chambers comprises a closeable line in communication with ambient air.

9. The device according to claim 1, wherein the metallic skin consists of stainless steel.

10. The device according to claim 1, wherein the through openings have closure flaps configured to separate the hollow interiors of the production chambers from one another.

11. An apparatus for manufacturing a device according to claim 1, the apparatus comprised of:

a flat straightening plate configured to receive the metallic skin of one of the chamber parts during pouring of the concrete to form the chamber part and to anchor the metallic skin in the concrete, wherein a frame, configured to be tightly placed onto a flat surface, is provided to receive a curable epoxide resin for forming a planar plate surface of the flat straightening plate.